IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.4341 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

KK GUPTA
VERSUS
THE CHAIRMAN, INDIAN OIL CORPORATION & ORS.

Appearance:
MR SR BRAHMBHATT for the Petitioner
MS MS SHAH for Respondents

Coram: S.K. Keshote,J
Date of decision:15/08/1997

C.A.V. JUDGMENT

#. Shri B.P.Tanna has advanced arguments in this case on

behalf of petitioners on 8th April 1997. The order was kept CAV. During the course of dictation of the order, it has been found that the learned counsel for respondent-Corporation has not given to the Court, a copy of Conduct, Discipline & Appeal Rules of 1980, and as such, the matter was directed to be listed for further consideration in the Court on 26th June 1997. The learned counsel for respondents has given the Rules, 1980, and this time, Shri S.R. Brahmbhatt, appears for the petitioner and though the arguments were completed, both the parties were further heard in the matter.

#. The petitioner, an officer of the respondent-Corporation who was on probation at the relevant time, filed this writ petition before this Court against the order of the respondent dismissing him from services. The petitioner has been dismissed from services after misconduct alleged against him was found proved in departmental inquiry. The order of dismissal passed by the disciplinary authority has been affirmed by the appellate authority and that order is also under challenge in this Special Civil Application.

#. The chargesheet came to be issued to the petitioner by the respondents vide memo dated 12th November 1982, relevant part of which reads as under:

1. It is alleged that you have committed the following act/s of misconduct. The circumstances alleged against you in the matter are mentioned below:

I. On your promotion during July 1982, you have been posted as Sr.Sales Officer at Ahmedabad on probation. It is alleged that you have been demanding and taking money from the distributors under one pretext or other as under:

1) On your demand you were paid an amount of Rs.6,000/- by M/s. Surinder Pal & Co. which you refunded back to them vide Cheque No.224447 dated 4.9.82 only when this matter was brought to the notice of Divisional Manager, Ahmedabad, by the said distributor.

2) You received an amount of Rs.2,000/- from M/s.A.G. Gas Agency on demand. Subsequently, you also took Rs.50/- from the partner of M/s.A.G. Gas Agency (Shri Anil Gupte), but you have not paid back the same to them.

3) You demanded an amount of Rs.2,000/from another LPG Distributor M/s.A.R.A. Cooperative Stores, Ahmedabad, which ultimately was not paid to you due to the intervention of DM, Ahmedabad.

II. Your touring pattern and tour report have not been accurate. During the period 16.6.82 to 30.6.82 and 1.7.82 to 15.7.82, you submitted the following TA Bills for which there were no proper records of having contacted the distributors:

1) A TE Bill for Rs.546/- for the period 16.6.82 to 30.6.82. On being questioned about the TE Bill for the period 16.6.82 to 30.6.82, you submitted a revised TE Bill with considerable changed reducing the bill from Rs.546/- to Rs.321/- which is obviously an afterthought.

2) Similarly, with regard to your TE Bill for the period 1.7.82 to 15.7.82, when you were asked about certain discrepancies, you replied that Corporation is at liberty to disallow and reject the TE Bill as you did not have any documentary proof for having visited the various locations by way of tour reports.

III. It has been observed that you have not been performing your duty as per the laid down norms for a Sr.Sales Officer. It has also been observed that you have called a distributor, M/s.Surinder Pal & Co., with blank intimation cards to be signed by you in the Divisional Office without verifying the records at the show-room. You signed few cards on 13.8.1982.

The above acts are highly irregular and constitute serious lapses on your part.

2. In view of the above charges, you have allegedly committed the following acts of misconducts:

(i) Demanding and accepting money from the Distributors in order to meet self requirements.

(ii) Acting in a manner prejudicial to the interest of the Corporation.

(iii) Misuse of official position.

(iv) Commission of any acts subversive of discipline or good behaviour.

#. The petitioner filed reply to the chargesheet and as usual, he has denied all the charges. The disciplinary authority was not satisfied with the reply of the petitioner and it has decided to hold departmental inquiry against the petitioner and accordingly the inquiry committee was constituted vide order dated 17.1.83. This inquiry committee was consisted of two members; Shri D.L. Punjabi and Shri N.K. Mukherjee. In the inquiry, both documentary and oral evidence have been produced. The inquiry committee submitted its report on 6.12.83 to the disciplinary authority wherein all the charges framed against the petitioner were found proved. The petitioner was given a show cause notice vide memorandum dated 12th November 1984 and it is not in dispute that a copy of the inquiry report was enclosed to that show cause notice. The petitioner filed a detailed reply to the show cause notice. The disciplinary authority under its order dated 22.1.85, ordered dismissal of the petitioner from the services of the Corporation with immediate effect. This order of the disciplinary authority was appealable under Rule 38 of the Conduct, Discipline & Appeal Rules, 1980 of the Indian Oil Corporation Ltd., and the petitioner filed an appeal before the appellate authority which came to be dismissed as intimated to him under the letter dated 19th April 1985. Hence this Special Civil Application.

#. The learned counsel for the petitioner Shri B.P. Tanna and Shri S.R.Brahmbhatt have raised three contentions challenging the orders of disciplinary authority and appellate authority. The first contention is that both the orders of the disciplinary authority and appellate authority are non speaking orders. These are cryptic orders and as such, the writ petition deserves to be accepted only on this ground. To buttress this contention, the learned counsel for the petitioner contended that the petitioner filed details reply to the show cause notice running in pages but the disciplinary authority has felt contended by passing a non speaking order and none of the contentions raised by the petitioner therein have been referred, what to say to consider the same. So far as the challenge to the order of appellate authority is concerned, the learned counsel

for the petitioner contended that the petitioner filed detailed appeal and various contentions have been raised therein but the appellate authority felt contended by passing a cryptic order. The contentions raised in the Memo of appeal have not been referred to, what to say to consider the same. Three judgements of Hon'ble Supreme Court are relied upon in support of this contention and reference to those will be made later at appropriate place in the judgement.

#. It has next been contended that the present is the case of no evidence. There was no evidence whatsoever against the petitioner in respect of charged framed against him and as such both the authorities have committed serious illegality in holding him guilty of charges and consequently dismissing him from services. The learned counsel for the petitioner contended that it is only a case of taking of loan by the petitioner from the distributors and not a case of taking illegal gratification. In support of his contention, the learned counsel for the petitioner placed reliance on the decision of this Court in the case of Siddharth Mohanlal Sharma v. South Gujarat University, reported in 23(1) GLR 233. Lastly, it is contended that taking into consideration the totality of the facts of this case, the charges framed against the petitioner and the evidence on record in the inquiry, the punishment which has been given to him is highly disproportionate to his guilt.

#. On the other hand, the learned counsel for the respondents Ms.M.S. Shah, contended that the inquiry has been conducted in the present case by inquiry committee which consisted of two members and a detailed inquiry report has been submitted. In case where disciplinary authority has entrusted the inquiry to be held against the petitioner to a committee and the disciplinary authority is in agreement with the finding of the inquiry committee, it was not necessary for it to pass a detailed and reasoned order. It is a case of acceptance of finding of the inquiry committee by disciplinary authority and the order which has been passed in the present case cannot be termed as cryptic or non speaking order. In case where inquiry has been held it is not necessary for disciplinary authority to pass a detailed order nor it is a case where disciplinary authority can be said to be a Civil Court or Statutory Tribunal where it has to pass a detailed order.

#. It has next been contended by Ms.M.S.Shah, learned counsel for the respondents that a copy of the inquiry report has been sent to the petitioner alongwith show

cause notice. So the detailed reasons and findings which were given to hold the petitioner guilty of alleged misconduct were available to him and as such these reasons and findings could have been taken to be reasons and findings given by the disciplinary authority in its order.

#. Affidavit has been filed on record of Shri B.K.Bakshi, Director (Marketing) of the Corporation who was appellate authority in the matter. The appellate authority has stated on oath before this Court that after examining the papers and after considering relevant facts he passed the order in appeal. A copy of the order annexure `A' is also produced on record. Making reference to the provision of Rule 38 of the Rules 1980, and the aforesaid Affidavit of the appellate authority, the learned counsel for the respondents, Ms.M.S. Shah contended that it cannot be said that the order of the appellate authority is non speaking one or cryptic order. So far as the next contention of the learned counsel for the petitioner is concerned, the learned counsel for respondents Ms.M.S. Shah contended that it is not a case of no evidence. There was wholesome evidence against the petitioner on the charges framed against him and the inquiry committee, after considering each and every peace of evidence produced on record, has recorded finding against the petitioner. The statement of witnesses has also been produced on record and from perusal of the same it comes out that it is a case where the petitioner has demanded money from distributors, not as a loan but for extraneous consideration. Regarding charges of TA bills etc., the learned counsel, Ms.M.S.Shah, for respondent-Corporation submitted that it is a case where the petitioner has not submitted correct TA bills. Looking to the facts of this case, the charges and the position of the petitioner, the punishment of dismissal given to him cannot be said to be disproportionate. Further, Ms.M.S.Shah, learned counsel for the respondents submitted that in the matter of quantum of punishment which should be given to the delinquent officer for proved misconduct, this Court has very very limited power of judicial review. This Court may interfere in the quantum of punishment where it finds the punishment to be disproportionate or highly excessive to its judicious conscious and not otherwise.

##. Lastly, the learned counsel for the respondents, Ms.M.S. Shah, relying on the latest decision of Hon'ble Supreme Court in the case of State Bank of Patiala & Ors. v. S.K. Sharma, reported in AIR 1996 SC 1669, contended that in such matters, this Court should not interfere

unless in the opinion of that Court a failure of justice has in fact been occasioned thereby. These are the matters where the officer of the Corporation has incurred in illegal activities and if any leniency is shown, then it will encourage officers for corruption, which ultimately may not be in the larger interest of public.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The Corporation has its own Rules for the conduct, discipline and appeal, known as Indian Oil Corporation Ltd. Conduct, Discipline & Appeal Rules, 1980 (hereinafter referred to as `Rules 1980'). For the purpose of deciding this case, Rule No.31, 32, 33, and 38 of the Rules 1980, are relevant. Rule 31 of the rules 1980 lays down procedure for imposing major penalties. As per Rule 29 of these Rules, dismissal and removal from services, among other penalties, are major penalties. Sub Rule 4 of Rule 31 of the Rules 1980 provides that on receipt of the written statement of the employee to the chargesheet or if no such statement is received within time specified, an inquiry may be held by the disciplinary authority itself, or by an inquiring authority so appointed by the disciplinary authority under sub clause (2). Sub Rule (2) of Rule 31 of Rules 1980 empowers a disciplinary authority where it is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself inquire into, or appoint any officer of the Corporation or any public servant (hereinafter called the inquiring authority) to inquire into the truth thereof. A plain reading of the aforesaid two sub Rules of Rule 31 of Rules 1980 gives out that in disciplinary matters, the disciplinary authority itself may inquire into the truth of an imputation of misconduct or misbehaviour against the delinquent officer or it may entrust this work to any officer of the Corporation or any public servant. In the case in hand, the disciplinary authority, in exercise of its powers, under sub Rule 2 read with sub Rule 4 of Rule 31 of Rules 1980, appointed an inquiry committee consisting of two members. Sub Rule 19 of Rule 31 of Rules 1980 puts an obligation upon inquiring authority or the committee, on conclusion of an inquiry, to prepare a report, and that report shall contain -- (a) a gist of the charges, (b) a gist of the defence of the employee in respect of each charge, (c) an assessment of the evidence in respect of each charge, and (d) the findings on each charge and the reasons therefor. Clause (ii) of Sub Rule 19 of Rule 31 of Rules 1980 is also to be noticed. The

inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include -- (a) the report of the inquiry prepared by it under sub-clause (i), (b) oral and documentary evidence produced in the course of the inquiry, (c) written briefs referred to in sub-rule (16), if any, and (d) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry. Rule 32 of the Rules 1980 makes a provision for action on the inquiry report. Under this Rule, the disciplinary authority has to act as under:

(1) It may, for the reasons to be recorded by it in writing, remit the case to the inquiring authority for fresh or further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 31 as far as may be.

(2) If it disagrees with the findings of the inquiring authority on any charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the charges is of the opinion that any of the penalties specified in Rule 29 should be imposed on the employee, is shall, notwithstanding anything contained in Rule 33, make an order imposing such penalty.

(4) Lastly, if the disciplinary authority, having regard to its findings on all or any of the charges, is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned.

Rule 34 of the Rules 1980 makes a provision for communication of the orders. The orders made by the disciplinary authority under Rule 32 of Rule 33 with regard to its findings on each charge shall be communicated to the employee concerned who shall also be supplied with a copy of the inquiry report, if any. Further, there is an explanation to Rule 34 of the Rules

1980 which provides that where an inquiry is held by an inquiring authority appointed by the disciplinary authority and the disciplinary authority disagrees with any or all the findings of the inquiring authority on each of the charges, orders of the disciplinary authority will also state the reasons for his disagreement with the findings of the inquiring authority.

##. So Rule 32 of the Rules 1980 does not lay down any particular form or manner in which the disciplinary authority should record its findings on each charge. The disciplinary authority, while acting under Rule 32 of the Rules 1980, has before it, the record of inquiring authority as well as the findings of the inquiring authority on each charge with the reasons therefor. Rule 32 of the Rules 1980 puts upon the disciplinary authority, an obligation to record its own reasons where it is disagreeing with the findings of the inquiring authority on any charge for such disagreement and further obligation is put to record its own findings on such charge, if the evidence on record is sufficient for the purpose. The other part of Rule 32 of the Rules 1980 deals with the matter where the disciplinary authority is in agreement with the findings of the inquiring authority. In case where the disciplinary authority is in agreement with the findings of the inquiring authority recorded on each charge, then it is nowhere provided in the Rules 1980 that it has to repeat its own findings on each and every charge. So a distinction has to be drawn where the disciplinary authority has to deal with the matter after receipt of report from the inquiring authority, where it is in agreement with the same and where it is not in agreement with the same. In the latter case, it has to record its reasons for such disagreement and further obligation has been cast to record its own findings on such charges. Clause (3) of Rule 32 of the Rules 1980 though refers, "if the disciplinary authority having regard to its findings on all or any of the charges..." but a plain reading of sub clause (2) and this clause clearly gives out that a rigidity, and an obligation, as is there upon the disciplinary authority under clause (2) of Rule 32, is not there in clause (3) of Rule 32 of Rules 1980.

##. In the case of Union of India & Ors. v. K. Rajappa Menon, reported in AIR 1970 SC 748, the Hon'ble Supreme Court has considered the matter with reference to the Railway Servants Conduct and Disciplinary Rules, Rule 1713. Rule 1713 aforesaid which was there before the Hon'ble Supreme Court for consideration provides that, "if the disciplinary authority is not the enquiring

authority, it shall consider the record of the enquiry and record its findings on each charge". So, this clause, to substantial extent, is similar to sub Rule (2) of Rule 32 of the Rules 1980 of the Corporation in the present case. The order which was there for consideration before the Hon'ble Supreme Court in that case has been reproduced in para-2 of the Judgment. The dismissal order passed in the present case has been filed by the petitioner at annexure `D', and that order reads as under:

Sub: Disciplinary case against you - Dismissal.

This has reference to our Charge-Sheet No.IR/1461(W-45) dated 12.11.1982, your reply dtd.7.12.82 to the Charge-Sheet, subsequent enquiry and your reply dated 20.12.84 to our Show Cause Notice No.IR/1461(W-45) dated 12.11.1984.

After carefully considering the above, it has been decided to dismiss you from the services of this Corporation. You are, therefore, hereby dismissed from the services of the Corporation with immediate effect.

You are further informed that as per rule 38 of our CDA Rules 1980, you can prefer an appeal if you so desire, through proper channel within 60 days from the date of the receipt of this order to Director (M) who is the appellate authority.

The order which was under consideration before the Hon'ble Supreme Court was, to substantial extent, similar to the order impugned in the present case. There also contention has been made that the order is cryptic order and the disciplinary authority has not recorded its own findings on each charge. Repelling that contention, Their Lordships Court in the aforesaid case held that Rule 1713 does not lay down any particular form or manner in which the disciplinary authority should record its findings on each charge. All that the Rule requires is that the record of the enquiry should be considered and the disciplinary authority should proceed to give its findings on each charge. This does not and cannot mean that it is obligatory on the disciplinary authority to discuss the evidence and the facts and circumstances established at the departmental inquiry in details and write as if it were an order or a judgment of a judicial tribunal. Where, the disciplinary authority, after giving consideration to the record of proceedings, agrees with the findings of inquiring officer that all the

charges mentioned in the charge-sheet have been established, it meant that he was affirming the findings on each charge and that would certainly fulfil the requirement of the Rule. The Rule after all has to be read not in a pedantic manner but in a practical and reasonable way. From the order of the disciplinary authority dated 22.1.85, it is clear that it has passed the said order after carefully considering the inquiry proceedings, which contains the record as provided in Sub Rule 19 of the Rule 31 of the Rules 1980. Where the disciplinary authority is affirming the finding recorded by the inquiring officer, how far it is justified to claim by the delinquent officer that it has to record its own findings on each charge. It is only a repetition of things which will not otherwise serve any purpose of delinquent officer. The only thing which is obligatory and essential is to see that the inquiry report is furnished to the delinquent officer either alongwith the order or earlier to the order. In the present case, a show cause notice was given to the petitioner and an inquiry report was enclosed to it. So, the inquiry report was with him at the time when the order dated 22.1.85 was received by him from the disciplinary authority. The findings of the disciplinary authority, in such case, can be read from the inquiry report itself. The learned counsel for the petitioner fails to show how any prejudice is likely to be caused or in fact has been caused to the petitioner in the present case for want of recording of findings on each charge by disciplinary authority. The matter would have been different where the inquiry report has not been furnished and in that case, legitimate grievance could have been made that it is a non speaking order or cryptic order. The reasons may not be there in the order of disciplinary authority in support of findings on the charges, but where the disciplinary authority is affirming the findings of the inquiring officer and the inquiry report has been made available to the delinquent officer, in such case, in view of the language used in the Rule 32 of the Rules 1980, and of the decision of Hon'ble Supreme Court in the case of Union of India v. K.Rajappa Menon & Ors. (supra), the contention of the learned counsel for the petitioner that the order of the disciplinary authority is cryptic or non speaking order, does not stand to merits.

##. The next attack of the learned counsel for the petitioner is on the order of the appellate authority on the ground that it is a non speaking and cryptic order. Rule 38 of the Rules 1980 reads as under:

(i) An employee may appeal against an order imposing upon him any of the penalties specified in Rule 29 or against the order of suspension/referred to in Rule 26. The appeal shall lie to the authority specified in the schedule.

(ii) An appeal shall be preferred within 60 days from the date of communication of the order appealed against. The appeal shall be addressed to the Appellate Authority specified in the schedule and submitted to the authority whose order is appealed against. The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the appellate authority. The appellate authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders. The appellate authority may pass order confirming, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

Provided that if the enhanced penalty which the appellate authority proposed to impose is a major penalty specified in Rule 29 and an inquiry as provided in Rule 31 has not already been held in the case, the appellate authority shall direct that such an inquiry be held in accordance with the provisions of Rule 31 and thereafter consider the record of the inquiry and pass such orders as it may deem proper. If the appellate authority decides to enhance the punishment but an inquiry has already been held as provided in Rule 31 the appellate authority shall give a show-cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The appellate authority shall pass final order after taking into account the representation, if any, submitted by the employee.

(iii) Every employee submitting an appeal shall do so separately and in his own name.

(iv) Every appeal referred under these Rules shall contain all material statements and arguments relief on by the appellant and shall contain no disrespectful and/or improper language and shall be complete in itself.

(v) The authority who passed the order, which is appealed against, may withhold the appeal if it is not made in accordance with the rules and submitted within the time-limit, or if it is a repetition of an appeal already decided and no new facts and/or circumstances/considerations have been adduced.

##. So, the authority whose order is appealed against has been put under an obligation under this Rule to forward the appeal together with its comments and the records of the case to the appellate authority. The record of the case has to be read in the context of sub Rule (19) of Rule 32 of the Rules 1980. It is therefore clear that the disciplinary authority has to send the complete record of the inquiry, i.e. the report of the inquiring authority together with record as provided in sub clause (i) and (ii) of sub Rule 19 of Rule 31 of the Rules 1980. The appellate authority, while dealing with the appeal of the delinquent officer has to consider whether the findings are justified and whether the penalty is excessive or inadequate and pass appropriate order. The appellate authority may pass order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case. In the case where the appellate authority proposes to impose by way of enhancement, the penalty given by the disciplinary authority and in case the proposed enhanced penalty is a major penalty specified in Rule 29 and an inquiry as provided in Rule 31 of Rules 1980 has not already been held, the appellate authority shall direct such an inquiry be held in accordance with the provisions of Rule 31 of Rules 1980 and thereafter consider the record of the inquiry and pass such orders as it may deem proper. In another case, where the appellate authority decides to enhance the punishment but an inquiry has already been held as provided in Rule 31 of the Rules 1980, it shall give a show cause notice to the employee as to why enhanced penalty should not be imposed upon

him. The appellate authority shall pass final order after taking into account the representation, if any, submitted by the employee. Annexure `A', to the reply to Special Civil Application is the forwarding letter of the appeal of the petitioner by the disciplinary authority and a bare reading of this document gives out that the said authority has sent its commends and the record of the case. The order of the appellate authority reads thus:

> "I have carefully examined these papers and applied my mind. Taking into consideration all the relevant factors, I do not think, there is any reason to change the earlier decision regarding his dismissal. His appeal is therefore rejected."

##. Now, I may briefly refer the decisions on which reliance has been placed by the learned counsel for the petitioner.

(i) Narayan Das Indurkhya v. The State of Madhya Pradesh -- AIR 1972 SC 2086

(ii) R.P. Bhatt v. Union of India & Ors. -- 1986(1) SLR 775

(iii) Ram Chander v. Union of India & Ors. -- 1986(2) SLR 608

In the case of Narayan Das Indurkhya v. The State of Madhya Pradesh (supra), the appellant challenged before the Hon'ble Supreme Court, the order of the Madhya Pradesh High Court dismissing the writ petition challenging the order of the State Government under Section 5 of the Criminal Law Amendment Act (Act XXIII of 1961) forfeiting the copies of a book published by the appellant under Section 4(1) of the Act. The Hon'ble Supreme Court, while dealing with this question, held that the order impugned therein did not disclosed the grounds and merely gave its opinion. The relevant portion of the judgment reads as under:

> The State Government by its order forfeited the copies of a book under Section 4(1) of the Act. The opening paragraph of the order merely quoted a portion of the words of Section 2 merely, that the book "questioned the territorial integrity and frontiers of India in a manner which is likely to be prejudicial to the interest of the safety or security of India". The order gave no

indication of the facts or the statements or the representations contained in the book which according to the State Government offended Section 2. In the order itself there was no reference to any map or any text in the book which would come within the mischief of the said section. The order gave no indication which formed the reason for Government taking the view that the book should be forfeited. The State government merely gave its opinion and not the grounds for its opinion. Clearly the grounds must be distinguished from the opinion....

In the case of R.P.Bhatt v. Union of India (supra), the case before the Hon'ble Supreme Court was under the provisions of Central Civil Services (Classification, Control and Appeals) Rules, 1965, and particularly rule 27(2) thereof. There the question was whether the appellate order passed by the Director General Border Roads Organization was in conformity with the requirement of Rule 27(2) of the Rules made applicable to the personnel of the Border Roads Organization. The Hon'ble Supreme Court examined that point with reference to Rule 27 of the Rules aforesaid and held as under:

4. The word `consider' in Rule 27(2) implies `due application of mind'. It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate, and thereafter pass orders confirming, enhancing etc. the penalty or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in Cls.(a), (b) and (c) thereof.

5. There is no indication in the impugned order that the Director-General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not whether such non compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding

on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of Clause (c) of Rule 27(2), viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside.

In the case of Ram Chander v. Union of India (supra), the case before the Hon'ble Supreme Court was against the Railway Board dismissing the appeal preferred by the appellant under Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968, and the grievance therein was that it was a non speaking order. The matter has been examined with reference to Rule 22 of the aforesaid Rules and the relevant portion of the judgment in paras 5, 9, and 24 reads as under:

5. To say the least, this is just a mechanical reproduction of the phraseology of R.22(20 of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of R.22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside.

9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty case on an appellate authority to give reasons where the order is one of affirmance. Here, R.22(2) of the Railway Servants Rules in express terms

requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under R.27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. R.22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in R.6 or enhancing any penalty imposed under the said rule, the appellate authority shall `consider' as to the matters indicated therein. The word `consider' has different shades of meaning and must in R.22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.

24. There has been considerable fluctuation of judicial opinion in England as to whether a right of appeal is real a substitute for the insistence upon the requirement of a fair hearing or the observance of natural justice which implies `the duty to act judicially'. Natural justice does not require that there should be a right of appeal from any decision. This is an inevitable corollary of the fact that there is not right of appeal against a statutory authority unless the statute so provides. Professor H.W.R. Wade in his Administrative Law, 5th edn., at P.487 observes:

"Whether a hearing given on appeal is an acceptable substitute for a hearing not given, or not properly given, before the initial decision is in some cases an arguable question. In principle there ought to be an observance of natural justice equally at both stages..... If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing : instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial."

After referring to Megarry.J.'s dictum in a trade union expulsion case holding that, as a general rule, a failure of natural justice in the trial body cannot be cured by sufficiency of natural justice in the appellate body, the learned author observes:

"Nevertheless it is always possible that some statutory scheme may imply that the `appeal' is to be the only hearing necessary."

The rules for consideration before the Hon'ble Supreme Court in the two later cases were different than the Rules in question in the present case. In the context of those Rules, decisions have been given and the matter in the present case has to be examined with reference to relevant Rules, i.e. Conduct, Discipline and Appeal Rules of 1980 of the Indian Oil Corporation Ltd.

##. Rule 38 of the Rules 1980 in the present case, and the Rules which were for consideration before the Hon'ble Supreme Court in the aforesaid cases were altogether different. In Rule 38 of the Rules 1980, the appellate authority is required to consider whether the findings are justified or whether the penalty is excessive or inadequate and then pass the appropriate orders. So, the appellate authority has to consider whether the findings recorded by the inquiring authority and affirmed by the disciplinary authority are justified or not. So, the appellate authority, on the basis of record sent to him, has to record its own satisfaction, whether the findings are justified or not. The second question on which the appellate authority has to be satisfied is of penalty and that is whether it is excessive or inadequate. So, on these two questions the appellate authority has to see whether the findings recorded in inquiry and affirmed by disciplinary authority are justified or not or the penalty given to the delinquent officer is excessive or inadequate. In view of this requirement of Rule 38 of the Rules 1980, I fail to see how it is obligatory on the part of the appellate authority to pass a detailed order and as per the contention of the learned counsel for the petitioner, to give finding on each and every ground raised by the appellant. What is required by Rule 38 of Rules 1980 of appellate authority to satisfy whether the findings are justified or not. Where the appellate authority is of the opinion, after considering the record, that findings recorded are justified, then again it is a case of affirmance of the order of the lower authority and as such no reasons or details order like judicial Court or tribunal is required to be made. Rule 38 of the Rules 1980 does not lay down any particular form or manner in which it has to record its satisfaction. In a case where the appellate authority is affirming the order of the lower authority, it cannot mean that it is obligatory on its part to discuss the

evidence and the facts and circumstances as to the departmental inquiry in detail and write as if it were an order or judgment of the judicial Court or tribunal. The validity of the order of the appellate authority on the ground of being a non speaking order or cryptic order has to be considered with reference to the requirement of Rule 38 of the Rules 1980 and the order made by the appellate authority.

##. In this case, an Affidavit has been filed by the officer who was at the relevant time, the appellate authority of the petitioner. In para-5 of the said Affidavit, he stated that he was the appellate authority at the relevant time and he had to decide the appeal of the petitioner which was received by him. He further stated that he had examined the papers and after considering the relevant facts, he has taken a decision to reject the appeal of the petitioner.

##. So, in view of the facts of the present case where there is a detailed consideration of the matter by the inquiring committee consisting of two members, their findings on each charge, the affirmance of the same by the disciplinary authority, fulfillment of Rule 38 of the Rules 1980 and the Affidavit of the appellate authority, it cannot be said that the order of the appellate authority deserves to be set aside only on the ground that it is a non speaking or cryptic order. Apart from this, there is yet another aspect which needs consideration. In the case of State Bank of Patiala & Ors. v. S.K. Sharma (supra), Their Lordships of the Hon'ble Supreme Court evolved certain basic principles of natural justice keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee. If an order is a non speaking order or a cryptic order, then it may be said to be against the basic principles of natural justice. Their Lordships of the Hon'ble Supreme Court in the aforesaid case held that an order passed imposing punishment on an employee consequent upon disciplinary inquiry in violation of rules/ regulations/ statutory provision governing such inquiries should not be set aside automatically. In such case the Court should inquire whether the provision violated is of substantive nature or whether it is procedural in character. A substantive provision has normally to be complied with and the theory of substantial compliance or the test of prejudice would not be applicable in such a case. In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the

delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under `no notice', `no opportunity' and `no hearing' categories, the compliant of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee. In the case of violation of procedural provision, which is of mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

##. Reference at this stage may also be conveniently be made to another decision of Apex Court in the case of S.K.Singh v. Central Bank of India & Ors., reported in (1996)6 SCC 415. The question before the Hon'ble Supreme Court for consideration, in this case, was whether the departmental inquiry initiated against the delinquent officer therein vitiates only on the ground that the copy of the inquiry report was not given to him. In the context of that grievance, the Apex Court though accepted that inquiry report should have been supplied to the delinquent officer, but held that non supply of the same in that case was inconsequential as the delinquent officer has failed to show that any prejudice has been caused to him. In paras - 3 & 4 of the judgment, the Apex Court has held:

> 3. The only controversy raised in the High Court was that as he was not supplied with the copy of the enquiry report, the order of dismissal was bad in law. The learned Single Judge as well as the Division Bench of the High Court have considered the effect of the judgment of the Constitution Bench of this Court in

Managing Director, ECIL v. B. Karunakar ((1993)4 SCC 727). the learned Single Judge as well as the Division Bench of the High Court had asked the petitioner as to what prejudice the petitioner had suffered for non-supply thereof. Since there was no adequate explanation offered by the petitioner, the High Court came to the conclusion that though the copy of the report was not supplied, on the facts, as no prejudice was proved, it was not a case warranting interference.

4. It is contended by Shri Khanduja, learned counsel for the petitioner that since this Court has laid down the law that supply of the copy of the enquiry report is a precondition for a competent officer to take disciplinary action, the appropriate course would have been to send back the case to the disciplinary authority. For this course, normally there is no quarrel, as this Court had settled the law that a copy of the report needs to be supplied to the delinquent employee to enable him to make representation against the proposed action or punishment and, thereafter, the authority is required to consider that explanation offered by the petitioner and then to take decision on the quantum of punishment. In this case, though copy of the report was not supplied, he was asked by the learned Single Judge as well as by the Division Bench as to what prejudice he suffered on account of non-supply of the report; but he was not able to satisfy the learned Judges as to the prejudice caused to him on account of non-supply of the enquiry report. On the facts, we find that there is no illegality in the decision taken by the High Court.

##. In the present case, the learned counsel for the petitioner, during the course of argument, though is unable to give out how any prejudice has been caused to the petitioner for want of speaking orders of both, disciplinary authority and appellate authority, he contended that a reasoned order would have been necessary so that this Court could have been in a better position to appreciate the controversy and the grievance of the petitioner. I fail to see any justification in the contention of the counsel for the petitioner and on this ground, it cannot be said that any prejudice has been caused to the petitioner. At the most it can be said that for want of a reasoned order, this Court may be put

to inconvenience, but that cannot be said to have caused any prejudice to the delinquent officer. I consider it to be appropriate at this stage to make a reference to the pleadings made by the petitioner in paras-20 and 21 of the Special Civil Application on this question. In para-20, the petitioner has made a complaint against the order of disciplinary authority on the ground that it is a cryptic order. The petitioner concluded this paragraph by saying that no speaking order is passed by the disciplinary authority enabling the petitioner to know on what basis the report of the inquiry committee is upheld by the disciplinary authority. Nothing has been stated how any prejudice has been caused to the petitioner by this non speaking order. What the petitioner urged in this paragraph is that the petitioner could not know on what basis the report of the inquiry committee is upheld by the disciplinary authority. The inquiry report is a detailed report and it is not a cryptic one and as such while accepting that report, I fail to see how far it is justified on the part of the petitioner to say that disciplinary authority has to disclose reasons on the basis of which it has to upheld the said report. On this count, it cannot be said that any prejudice has been caused to the petitioner as the order of the disciplinary authority is not a reasoned order. In para-21 of the Special Civil Application grievance has been made by the petitioner against the order of the appellate authority on the ground of being a non speaking order. In this paragraph, identical grievance has been made as made in para-20 of the Special Civil Application. I cannot do better than to refer the concluding part of para-21 which reads as under:

> ...In absence of any speaking order the petitioner would not be able to know on what grounds or counts the Appellate Authority has concurred with the action taken by the Disciplinary Authority. Hence the order of dismissal suffers from this illegality.

It is suffice to say that when it is an order of affirmance, then as stated earlier, no detailed order is required to be made and the appellate authority has to record its satisfaction, which has been done in the present case. In this paragraph also, the petitioner has failed to show how any prejudice has been caused to him for want of a reasoned order of appellate authority. In the case of Tara Chand Vyas v. Chairman & Disciplinary Authority and Ors., reported in (1997)4 SCC 565, the Apex Court negatived the contention of the counsel for the appellant appearing therein that no reasons have been

given in support of conclusion to substantiate charges by the disciplinary authority and appellate authority and that for proof of charges none of the witnesses was examined nor any opportunity was given to cross-examine them and the petitioner had disputed his liability. The Court held that when the inquiry officer had elaborately discussed each charge and given reasons which were considered by disciplinary authority and reached the conclusion that the charges were proved. So had the appellate authority. They are not like civil court. The net result of the aforesaid discussion is that the contention of the counsel for the petitioner is being devoid of any substance.

##. The next contention of the learned counsel for the petitioner is that there is no evidence in support of the charge and as such, the petitioner has wrongly been held to be guilty of charges. Before dealing with this contention, I consider it to be appropriate to refer to the decision of this Court in the case of Siddharth Mohanlal Sharma v. South Gujarat University (supra). This Court has held in the facts of that case as under:

> The question of penalty has to be examined in each case on the basis of the peculiar facts and circumstances present therein. Minimum and maximum penalty may be prescribed within reasonable limits. Within those parameters, the quantum of penalty may, and more often than not, will differ from case to case depending upon its varying features. To believe, therefore, that to treat one errant student differently from another in the matter of imposition of penalty, where both are found to have committed a similar malpractice, would necessarily expose the University to the charge of discrimination, betrays ignorance of the true principle governing the exercise of discretionary powers in the penological field. In fact, imposition of uniform penalty in all cases involving a similar malpractice, without regard to the presence of absence of relevant circumstances bearing on the quantum, may sometimes invite the charge of non-application of mind or arbitrary exercise of power. Under the circumstances, if the case had not been decided on merits in favour of the petitioner, the grossly disproportionate penalty imposed upon the petitioner would have been certainly interfered with and the impugned decision in so far as it related to penalty would have been quashed and the University would have

been precluded from reconsidering the question of penalty and directed to treat the chapter as closed having regard to the penalty already undergone. (para 48)

Ratio is that in case where there is no evidence in support of charges then certainly the delinquent officer could not be penalized. But here in this case question is whether there is evidence or not in support of charges. The learned counsel for the petitioner has tried to convince this Court that it was merely a case of taking loan by the petitioner from the dealers and not a case of taking any illegal gratification. In this case, both the charged were held to be proved. At the outset, it needs to be mentioned that this Court sitting under Article 226 of the Constitution of India and dealing with the cases of departmental inquiries and findings recorded therein, cannot assume the powers of appellate authority. This jurisdiction, in such cases, is very limited for instance where it is found that the domestic inquiry has vitiated because of non observance of principles of natural justice, denial of reasonable opportunity, findings based on no evidence and/or punishment totally disproportionate to proved misconduct of the employee. A reference in this respect may have to the latest decision of Apex Court in the case of Indian Oil Corporation Ltd. & Anr. v. Ashok Kumar Arora, reported in JT 1997(2) SC 367. That was also a case from Indian Oil Corporation Ltd. Having this limitation in mind, that I have no jurisdiction to enter into the arena of appreciation of evidence, but as the petitioner has produced on record the statements of two of the witnesses recorded in the inquiry, I have gone through those statements. After going through those statements, I am satisfied that it was a case of taking of illegal gratification by the petitioner. Theory of taking loan is nothing but only an adjustment of the accounts or a defence taken by the petitioner. Shri Yeshpal Singh of Surenderpal & Co. was examined and from reading of the statement of that witness, I am satisfied that so far as the dealer is concerned, they have given money to the petitioner under the belief that this money is to be returned by the petitioner, but with what intent the petitioner has taken money from them is important. The petitioner has taken the money with an intention not to return the same. So in this case, it is certainly a demand of illegal gratification. In case it would have been simply a case of taking loan which has to be returned back to the dealer, then what for the complaint has been made by the dealer to the higher authorities in the Corporation and only thereafter the petitioner returned the money? From

the statement of Shri Yeshpal Singh, it is clearly borne out that the petitioner did not want to create any evidence that he has taken money from the dealer. If it would have been only a case of taking loan from the dealer by the petitioner, then why he has not accepted the account payee cheque. Insistence on the part of the petitioner to give cash money clinches the issue. From the statement of this witness it further comes out that the petitioner was, on the way, asked by the partner of the firm that when he is going to return the money, the petitioner told that money is non returnable. That created doubt in the mind of the firm and as such, on 3rd August, 1982, i.e. within three or four days of giving money, the matter was reported to Divisional Office. This loan theory has been creation of petitioner himself which is clearly evident from the statement of Shri Yeshpal Singh. When this matter had become serious, the petitioner returned the money by account payee cheque and the partner of the firm was asked to write on the counter foil, as loan returned, which he did. Capt.Surindernath has also been examined and he stated that when he asked as to when he will return the money, the petitioner said that it is non returnable. So from the statements of these two witnesses, it is a clear case of demand of money by the petitioner for ulterior motive and purpose. The dealer though wanted to please the petitioner, but not by giving non refundable money. The dealer wanted to give the money by account payee Cheque. The firm has given the money to the petitioner by way of help and with the belief that the petitioner will return the same, but the intention of petitioner, in this case, has to be considered and with what intent, the petitioner has taken money is a relevant consideration which is clearly borne out from the statement of these two witnesses. As stated earlier, when the intention of the petitioner was made known to the dealer, they made complaint to the Divisional office. So the theory of taking of loan etc. is wholly irrelevant. The contention of the learned counsel for the petitioner that there is no evidence to bring home the charges against the petitioner is not tenable.

##. The last contention of the learned counsel for the petitioner is regarding the quantum of punishment. In the matter of what punishment should be given to the delinquent officer for proved misconduct, it is suffice to say it is in exclusive domain of disciplinary authority or appellate authority. This Court, under Article 226 of the Constitution of India has very very limited power of judicial review on this question. Reference in this respect may have to the decisions of

Hon'ble Supreme Court in the cases of State Bank of India & Ors. v. Samarendra Kishore Endow & Anr., reported in JT 1994(1) SC 217 and in the case of B.C.Chaturvedi v. Union of India & Ors., reported in JT 1995(8)SC 65 as also the case of Indian Oil Corporation Ltd. & Anr. v. Ashok Kumar Arora (supra). The Apex Court, in these cases has observed that this Court can only interfere in the quantum of punishment where punishment is totally disproportionate to the misconduct of an employee. The petitioner was an officer of the Corporation and he was dealing with dealers. He was on probation and it is really befitting of an officer that at such stage, he started to indulge in such activities. Such activities should not have been tolerated by the Corporation and minimum punishment on proof of such activities was dismissal or removal from services. The petitioner has taken money from dealers with an intention not to return the same. When an officer of the Corporation who is dealing with the dealers takes the money with an intention not to return the same, such act amounts to taking illegal gratification. It is however a different matter that the dealers were bold enough to have made a complaint against the petitioner. Otherwise he could have retained this money. So it is a case of taking illegal gratification by the petitioner and the minimum punishment in such matters should have been only of dismissal or removal from services. Reference in this respect may have to the decision of the Apex Court in the case of Narayan Dattatraya Ramteerthakhar v. State of Maharashtra & Ors., reported in (1997)1 SCC 299. Though that was a case of misappropriation of public money, but taking of illegal gratification by an officer is not less serious than misappropriation of public money. In view of this fact, it cannot be said that the punishment of dismissal given to the petitioner in the present case is totally disproportionate to proved misconduct. The charges against the petitioner are serious and both were found proved. Both the charges against the petitioner are of serious nature. So far as charge No.2 is concerned, in fact, the petitioner has not contested the same. The submission of false T.A. bills is certainly a serious misconduct and on proof of the same, the minimum punishment could have been only of dismissal.

##. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. The petitioner is directed to pay Rs.3,000/- by way of costs of this petition to the respondents.

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(sbl)